

**UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
MICROSOFT CORPORATION,  
SAP AG, and SAP AMERICA, INC.,

Plaintiffs,

v.

DATATERN, INC.,

Defendant.

**Consolidated Cases:**

Civil Action No. 11-cv-02365-RJH

Civil Action No. 11-cv-02648-RJH

**DECLARATION OF DAVID HIMELFARB IN SUPPORT OF  
DATATERN, INC.'S MOTION TO AMEND ITS COUNTERCLAIMS**

I, David Himelfarb, declare under the penalty of perjury as follows:

1. I am a partner at McCarter & English, LLP, counsel for Datatarn, Inc. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein and in support DataTern's Motion to Amend its Counterclaims.

2. Attached hereto as Exhibit A is a true and correct copy of Microsoft's Responses to DataTern, Inc.'s Second Set of Interrogatories Nos. 13-25.

3. Attached hereto as Exhibit B is a true and correct copy of SAP AG and SAP America, Inc.'s Responses to DataTern's Second Set of Interrogatories (Nos. 13-22).

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 28th DAY OF NOVEMBER 2012.

/s/ David Himelfarb  
David Himelfarb

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of this Declaration of David Himelfarb in Support of DataTern, Inc.'s Motion to Amend its Counterclaims was served on this 28<sup>th</sup> day of November, 2012 upon counsel of record for Microsoft Corp., SAP AG and SAP America, Inc. via *ECF*.

/s/ David Himelfarb  
David Himelfarb